

The Honorable Marc L. Barreca
Chapter 13
Hearing Date: 3/10/2011
Hearing Time: 9:30 AM
Location: 700 Stewart Street, 7106
Seattle, WA
Response Date: 3/03/2011

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

In re:

Sean Shiotani
Ginger Shiotani

Debtors,

Case No. 10-23144-MLB

Chapter 13

OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN

The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the holders of the Certificates, First Horizon Mortgage Pass-Through Certificates Series FHASI FH07-AR1, by First Horizon Home Loans, a division of First Tennessee Bank National Association, Master Servicer, in its capacity as agent for the Trustee under the Pooling and Servicing Agreement (“Secured Creditor”) objects to Confirmation of the Chapter 13 Plan proposed by (“Debtors”) Sean Shiotani and Ginger Shiotani.

1. Secured Creditor is entitled to receive payments pursuant to a Promissory Note which is secured by a Deed of Trust on the real property (the “Property”) commonly known as 2346 West Viewmont Way West, Seattle, WA 98199. As of 10/29/2010, the amount in default was \$141,319.81, as described in the Proof of Claim filed by this Secured Creditor on or about 1/4/2011, incurred with respect to the default.

2. Debtor’s Plan is contradictory and misleading. Debtors propose to pay the ongoing monthly mortgage payment and pay the arrears in full, yet the plan further states Secured Creditor shall receive no payments for the first six months and if the Debtor cannot

Objection to Chapter 13 Plan - 1
WA-10-39061

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1 modify the loan, then Debtor shall surrender the property and Secured Creditor shall be granted
2 relief. Clearly, the provisions providing for ongoing payments and arrears are not intended to
3 actually pay the claims.

4 3. Debtors' Plan provides for payments to the Trustee in the amount of \$4,400.00 per
5 month for 36 months. However, according to Schedules I & J, Debtors only have \$1,022.62
6 available in monthly net income to commit towards plan payments. Not only do Debtors not
7 have sufficient funds available to make the plan payments, but Debtors have very little chance of
8 success in modifying Secured Creditor's loan (which currently has a monthly mortgage payment
9 of \$7,519.79) based upon income requirements. Therefore, the Plan is not feasible.

10 4. Unless otherwise ordered, under 11 U.S.C. § 1326(a)(1), the Debtors must
11 commence making the payments proposed by the Plan within 30 days after the Petition is filed.
12 The Plan must comply with all applicable provisions of 11 U.S.C. § 1325 to be confirmed. As
13 such, the Plan cannot be confirmed.

14 CONCLUSION

15 Any Chapter 13 Plan proposed by the Debtors must provide for and eliminate the
16 Objections specified above in order to be reasonable and to comply with applicable provisions of
17 the Bankruptcy Code. Secured Creditor respectfully requests that confirmation of the Chapter 13
18 Plan as proposed by the Debtors be denied, or in the alternative, be amended to provide for full
19 payoff of the arrearages owed to Secured Creditor.

20 WHEREFORE, Secured Creditor prays as follows:

- 21 1. That confirmation of the Proposed Chapter 13 Plan be denied, or in the
22 alternative, be amended to provide for full payoff of the arrearages owed to Secured Creditor;
23 2. For attorneys' fees and costs herein,
24 3. For such other relief as this Court deems proper.

25
26 Respectfully submitted,
McCarthy & Holthus, LLP

27 By: /s/ Angela M. Michael, Esq.
28 Attorney for Secured Creditor

CERTIFICATE OF SERVICE

On 2/4/2011, I served the foregoing **OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN** on the following individuals by electronic means through the Court's ECF program

COUNSEL FOR DEBTOR
Christina Latta Henry
chenry@seattledebtlaw.com
TRUSTEE
K Michael Fitzgerald
courtmail@seattlech13.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Lucian Perta
Lucian Perta

On 2/4/2011, I served the foregoing **OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN** on the following individuals by depositing true copies thereof in the United States mail at San Diego, California, enclosed in a sealed envelope, with postage paid, addressed as follows:

DEBTORS
Sean Shiotani
2346 W. Viewmont Way West
Seattle, WA 98199

Ginger Shiotani
2346 W. Viewmont Way West
Seattle, WA 98199

UNITED STATES TRUSTEE
700 Stewart St Ste 5103
Seattle, WA 98101

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ David Fry
David Fry